

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
OCT 31 2016
Clerk, U.S. District Court
District Of Montana
Missoula

BENJAMIN KARL SMITH,

Plaintiff,

vs.

IRL LAMBERTSON, OFFICER
FOSNESS, and OFFICER MACHLER,

Defendants.

CV 15-13-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Order, Findings and Recommendations in this matter on October 5, 2016, recommending denial of Defendants' motion for summary judgment without prejudice. The parties failed to timely object to the Findings and Recommendations, and so waived their right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations

omitted).

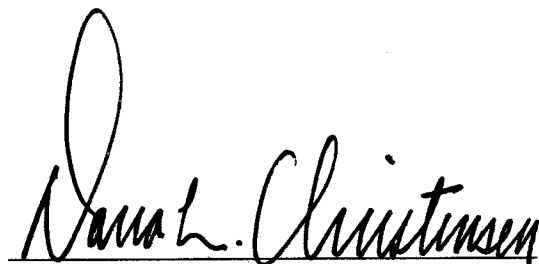
Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston's conclusion that Defendants' motion for summary judgment should be denied without prejudice in order to allow Plaintiff to conduct additional discovery. The Court further agrees that following the completion of discovery, Defendants may refile their motion for summary judgment.

There being no clear error in Judge Johnston's Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 6) are ADOPTED IN FULL.

(2) Defendants' Motion for Summary Judgment (Doc. 56) is DENIED without prejudice and subject to renewal after the completion of the discovery period provided to Plaintiff.

Dated this 31st day of October, 2016

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court